

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into its smallest irreducible unit for sale without a prior permit issued by the port director. The port director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found to be nonsaleable, if the merchandise to be destroyed is valued at less than 5 percent of the value of the merchandise at time of entry or \$1,250, whichever is less, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry and/or destruction whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

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#### ACCOUNTS

#### § 19.12 Inventory control and record-keeping system.

(a) *Systems capability.* The proprietor of a class 11 general order warehouse as described in § 19.1 must have an automated inventory control and record-keeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

(1) Accounting for all merchandise transported, deposited, stored, manipulated, manufactured, smelted, refined, destroyed in or removed from the bonded warehouse and all merchandise collected by a proprietor or his agent for transport to his warehouse. The records must provide an audit trail from deposit through manipulation, manufacture, destruction, and withdrawal from the bonded warehouse either by specific identification or other CBP authorized inventory method. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by CBP of the proprietor's compliance with these regulations and correctness of his annual submission or reconciliation;

(2) Producing accurate and timely reports and documents as required by this part; and

(3) Identifying shortages and overages of merchandise in sufficient detail to determine the quantity, description, tariff classification and value of the missing or excess merchandise so that appropriate reports can be filed with CBP on a timely basis.

(b) *Procedures manual.* (1) The proprietor must have available at the warehouse an English language copy of its written inventory control and record-keeping systems procedures manual in accordance with the requirements of this part.

(2) The proprietor must keep current its procedures manual and must submit to the port director a new certification at the time any change in the system is implemented.

(c) *Entry of merchandise into a warehouse—*(1) *Identification.* All merchandise collected by a proprietor or his agent for transport to his warehouse shall be receipted. In addition, all merchandise entered in a warehouse will be recorded in a receiving report or document using a customs entry number or unique identifier if an alternate inventory control method has been approved. All merchandise will be traceable to a customs entry and supporting documentation.

(2) *Quantity verification.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 19.6(a).

(3) *Recordation.* Merchandise received will be accurately recorded in the accounting and inventory system records from the receiving report or document using the customs entry number or unique identifier if an alternative inventory control method has been approved.

(d) *Accountability for merchandise in a warehouse—*(1) *Identification of merchandise.* The customs entry number or unique identifier, as applicable under § 19.4(b)(8), will be used to identify and trace merchandise.

(2) *Inventory records.* The inventory records will specify by customs entry number or unique identifier if an alternative inventory control method is approved:

(i) The location of the merchandise within the warehouse;

(ii) Except for merchandise in general order, the cost or value of the merchandise, unless the proprietor's financial records maintain cost or value and the records are made available for CBP review; and

(iii) The beginning balance, cumulative receipts and withdrawals, adjustments, destructions, and current balance on hand by date and quantity.

(3) *Theft, shortage, overage or damage—*(i) *General.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of \$100) must be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts

and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed \$100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section.

(ii) *Class 9 warehouses.* With respect to Class 9 warehouses, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of \$100) must be immediately brought to the attention of the port director, and confirmed in writing within 20 calendar days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of

the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed \$100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a unique identifier (see § 19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see § 19.4(b)(8)(ii) of this part).

(4) *Permit file folders*—(i) *Maintenance*. Permit file folders must be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals and blanket permit summaries

within five business days after the event occurs. The permit file folders must be kept in a secure area and must be made available for inspection by CBP at all reasonable hours.

(ii) *Review*. When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor must: review the permit file folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry; notify CBP of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed; and file the permit file folder with CBP within 30 calendar days after final withdrawal, except as allowed by paragraph (d)(4)(iv) of this section. The permit file folder for merchandise not withdrawn during the general order period must be submitted to the port director upon receipt from CBP of the CBP Form 6043.

(iii) *Exemption to maintenance requirement*. Maintenance of permit file folders will not be required, if the proprietor has an automated system capable of: satisfactorily summarizing all actions by CBP warehouse entry; providing upon demand by CBP an entry activity summary report which lists all individual receipts, withdrawals, destructions, manipulations and adjustments by warehouse entry and is cross-referenced to the source documents for each transaction; and maintaining source documents so that the documents can be readily retrieved upon request. Failure to provide the entry activity summary report or documentation supporting the entry activity summary report upon demand by the port director or the field director of regulatory audit could result in reinstatement by the port director of the requirement to maintain the permit file folder for all warehouse entries. When final withdrawal is made, the proprietor must submit the entry activity summary report to CBP. Prior to submission, the proprietor must ensure the accuracy of the summary report and assure that all supporting documentation is on file and available for review if requested by CBP.

(iv) *Exemption to submission requirement.* At the discretion of the port director, a proprietor may be allowed to furnish formal notification of final withdrawal in lieu of the requirement to submit the permit file folder or entry activity summary within 30 calendar days of each final withdrawal. If approved to use this procedure the proprietor could be required by the port director to submit permit file folders or entry activity summaries on a selective basis. Failure to promptly provide the permit file folder or entry activity summary upon request by the port director or the field director of regulatory audit could result in withdrawal of this privilege.

(5) *Physical inventory.* The proprietor must take at least an annual physical inventory of all merchandise in the warehouse, or periodic cycle counts of selected categories of merchandise such that each category is counted at least once during the year, with prior notification of the date(s) given to CBP so that CBP personnel may observe or participate in the inventory if deemed necessary. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under §144.34 of this chapter, the facility where the original entry was filed must reconcile the on-hand balances at all locations with the record balance for those entries with merchandise in multiple locations. The proprietor must notify the port director of any discrepancies, record appropriate adjustments in the inventory control and recordkeeping system, and make required payments and entries to CBP, in accordance with paragraph (d)(3) of this section.

(e) *Withdrawal of merchandise from a warehouse.* All bonded merchandise withdrawn from a warehouse will be accurately recorded within the inventory control and recordkeeping system. The inventory control and recordkeeping system must have the capability to trace all withdrawals back to a customs entry and to ultimate disposition of the merchandise by the proprietor.

(f) *Special provisions for use of FIFO inventory procedures—(1) Notification.* A proprietor who wishes to use FIFO pro-

cedures for all or part of the merchandise in a bonded warehouse must provide the port director a written certification that: The proprietor has read and understands CBP FIFO procedures set forth in this section; the proprietor's procedures are in accordance with CBP FIFO procedures, and the proprietor agrees to abide by those procedures; and the proprietor of a public warehouse will obtain the written consent of any importer using the warehouse before applying FIFO procedures to their merchandise.

(2) *Qualifying merchandise.* FIFO inventory procedures may be used only for fungible merchandise. For purposes of this section, "fungible merchandise" means merchandise which is identical and interchangeable for all commercial purposes. While commercial interchangeability is usually decided between buyer and seller or between proprietor and importer, CBP is the final arbiter of fungibility in bonded warehouses. The criteria for determining whether merchandise is fungible include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, value, brand name, unit of quantity (such as barrels, gallons, pounds, pieces), model number, style and same kind and quality. Fungible textile and textile products which are withdrawn from a Class 9 warehouse may be accounted for using FIFO inventory procedures, inasmuch as such articles would be exempt from textile quotas.

(3) *Merchandise specifically excluded.* FIFO procedures cannot be applied to the following merchandise, as well as any other merchandise which does not comply with the requirements of paragraph (f)(2) of this section:

(i) Merchandise subject to quota, visa or export restrictions chargeable to different countries of origin;

(ii) Textile and textile products of different quota categories;

(iii) Merchandise with different tariff classifications or rates of duty, except where the difference is within the merchandise itself (such as kits, merchandise in unusual containers) or where the tariff classification or dutiability is determined only by conditions upon withdrawal (for example, withdrawal

for vessel supplies, bonded wool transactions);

(iv) Merchandise with different legal requirements for marking, labeling or stamping;

(v) Merchandise with different trademarks;

(vi) Merchandise of different grades or qualities;

(vii) Merchandise with different importers of record;

(viii) Damaged or deteriorated merchandise;

(ix) Restricted merchandise; or

(x) General order, abandoned or seized merchandise.

(4) *Maintenance of FIFO.* FIFO procedures used for merchandise in any inventory category, must be used consistently throughout the warehouse storage and recordkeeping practices and procedures for the merchandise. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

(5) *FIFO recordkeeping.* In the inventory and accounting records, the proprietor must establish an inventory layer for each warehouse entry represented in each inventory category. The layers must be established in the order of time of acceptance of the entry or by the date of importation of merchandise covered by each applicable warehouse entry. There must be no mixing of layering both by time of acceptance and date of importation in the same warehouse. Records for each layer must, as a minimum, show the warehouse entry number, date of acceptance, date of importation, quantity and unit of quantity. They must also show for each entry the type of warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category must be posted in the appropriate inventory category within 2 business days after the event occurs.

All FIFO records and documentation must consistently use the same unit of quantity within each inventory category.

(6) *Entry requirements.* Warehouse entries covering any merchandise to be accounted for under FIFO must be prominently marked “FIFO” on the face of the entry document. The entry document or an attachment thereto must show the unique identifier of each inventory category to be accounted for under FIFO, the quantity in each inventory category and the unit of quantity.

(7) *Receipts.* Any shortages, overages, or damage found upon receipt must be attributed to the entry under which the merchandise was received. FIFO procedures will not take effect until the merchandise is physically placed in the storage location for the inventory category represented in the entry.

(8) *Manipulation.* When manipulation results in a product with a different unique identifier, the inventory and accounting records must show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. The withdrawal must show the unique identifiers of both the materials used in the manipulation and the product as manipulated. The quantities of the original unique identifiers will be deducted from their respective warehouse entries on a FIFO basis when the resultant product is withdrawn.

(9) *Discontinuance of FIFO.* A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently under FIFO by providing written notification to the port director. The notification must clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. Following notification, the merchandise must be segregated in both the recordkeeping system and the physical location by warehouse entry number and the quantities so removed must be deducted from the appropriate FIFO inventory category balances. Merchandise so removed must be maintained under the specific identification inventory method. FIFO procedures which were voluntarily discontinued may be reinstated, but not for merchandise

covered by any warehouse entry for which FIFO was discontinued.

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on CBP Form 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CBP Form 300, a letter signed by the proprietor certifying that the CBP Form 300 has been prepared, is available for CBP review, and is accurate. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the CBP Form 300 must cover all locations and warehouses of the proprietor. An alternative format may be used for providing the information required on the CBP Form 300.

(h) *Annual reconciliation*—(1) *Report.* Instead of preparing CBP Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. The proprietor shall retain the annual reconciliation report for 5 years from the end of the fiscal year covered by the report. The report must be available for a spot check or audit by CBP, but need not be furnished to CBP unless requested. There is no form specified for the preparation of the report.

(2) *Information required*—(i) *General.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the begin-

ning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(ii) *Class 9 warehouses.* If the proprietor of a Class 9 warehouse successfully demonstrates, by application to the appropriate port director, that shortages will be reported within 20 calendar days of discovery, the port director may approve the submission of a report that contains the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; date when resulting shortages and overages are reported to CBP; a description of merchandise for each entry or unique identifier; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

(iii) *Multiple facilities.* If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the annual reconciliation report must cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation report includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation report must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation report should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

(3) *Certification.* The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for CBP review, and is accurate. The certification letter must contain the proprietor's IRS number; date of fiscal year end; the

name and street address of the warehouse; the name, title, and telephone number of the person having custody of the records; and the address where the records are stored. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with paragraph (d)(3) of this section. Any previously unreported shortages and overages should be reported to the port director and any unpaid duties, taxes and fees should be paid at this time.

(i) *System review.* The proprietor must perform an annual internal review of the inventory control and record-keeping system and must prepare and maintain on file a report identifying any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

(j) *Special requirements.* A warehouse proprietor submission (CBP Form 300) or annual reconciliation must be prepared for each facility or location as defined in §§19.2(a) and 19.35(c) of this part. When merchandise is transferred from one facility or location to another without filing a rewarehouse entry, as provided for in §144.34(c) of this chapter, the submission/reconciliation for the warehouse where the entry was originally filed should account for all merchandise under the warehouse entry, indicating the quantity in each location.

[T.D. 97–19, 62 FR 15836, Apr. 3, 1997, as amended by T.D. 99–78, 64 FR 57565, Oct. 26, 1999; T.D. 02–65, 67 FR 68033, Nov. 8, 2002; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004; CBP Doc. 09–48, 74 FR 68684, Dec. 29, 2009]

#### MANUFACTURING WAREHOUSES

##### **§ 19.13 Requirements for establishment of warehouse.**

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing warehouses if the port director is satisfied that their location, construction, and arrangement afford adequate protection to the revenue. Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant,

apply to bonded manufacturing warehouses.

(b) Application for the establishment of such a warehouse shall be made to the director of the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in §19.2 with respect to the application to bond the premises and the execution of the bond shall be followed.

(d) A list of all articles intended to be manufactured in the warehouse shall be filed with the port director. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable.

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula.

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression.

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in